

2023-1877

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

MARMEN INC., MARMEN ENERGIE INC., MARMEN ENERGY CO.,

Plaintiffs-Appellants,

v.

UNITED STATES, WIND TOWER TRADE COALITION,

Defendants-Appellees

Appeal from the United States Court of International Trade in
Case No. 1: 20-CV-00169, Judge Jennifer Choe-Groves

**DEFENDANT-APPELLEE'S CONSENT MOTION TO ENLARGE
THE WORD LIMIT FOR THE GOVERNMENT'S RESPONSE BRIEF**

Pursuant to Federal Circuit Rule 26(b), defendant-appellee, the United States, respectfully requests that the Court grant an enlargement to the word limit to 17,000 words for the Government's consolidated response brief in this appeal. The response brief is currently due on November 1, 2023, and is limited under the Court's rules to 14,000 words. We have not previously requested an enlargement to the word limit. We have conferred regarding this request with counsel for the other parties to the appeal by contracting them by email on October 23, 2023, and by email on that date, each consented to our request. Specifically, Jay Campbell

consented on behalf of plaintiffs-appellants, Marmen, Inc., *et al.*, and Maureen Thorson consented on behalf of defendant-appellee, Wind Tower Trade Coalition.

Good cause exists to grant the relief we are requesting for several reasons. First, each of the three issues raised in this appeal—two concerning the particulars of accounting issues and one concerning the intricacies of a statistical method—is complex and technical in nature. Thus, in order to respond appropriately to the arguments raised in the opening briefing, while providing the proper context for the Department of Commerce’s (Commerce’s) determinations, we are required to address some of the underlying details of the agency’s calculations and decision-making, which adds length to our brief.

Second, for the statistical method issue, which concerns Commerce’s application of the “Cohen’s *d* test” as part of its “differential pricing” methodology to analyze the possibility of masked dumping, we anticipate addressing additional technical arguments raised by the *amicus* brief that has been filed in this appeal on behalf of several entities, which go beyond the arguments raised by appellants.

Finally, in addition to the above, the *amicus* brief relies on certain statistics materials that were not previously raised or cited by the appellants before the trial court or in their opening brief. This presents an additional issue that we are required to address as part of our response brief.

Notwithstanding the above, if the enlargement that we are requesting is granted, our response brief will still be materially shorter than the combined length of the opening and *amicus* briefs.

Overall, the enlargement to the word limit we are requesting will enable us to best assist the Court in resolving the issues presented on appeal. Accordingly, we respectfully request that the Court enlarge the word limit for the Government's response brief in this appeal to 17,000 words.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant
Attorney General

PATRICIA M. McCARTHY
Director

/s/ Reginald T. Blades, Jr.
REGINALD T. BLADES, JR.
Assistant Director

OF COUNSEL:
JESUS N. SAENZ
Attorney
Office of the Chief Counsel
for Trade Enforcement & Compliance
U.S. Department of Commerce

/s/ Joshua E. Kurland
JOSHUA E. KURLAND
Senior Trial Counsel
U.S. Department of Justice
Civil Division
Commercial Litigation Branch
P.O. Box 480, Ben Franklin Station
Washington, D.C. 20044
Tel: (202) 616-0477
Email: Joshua.E.Kurland@usdoj.gov

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Attorneys for Defendant-Appellees

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27(d)(2)(A) of the Rules of the United States Court of Appeals for the Federal Circuit, respondent's counsel certifies that this motion complies with the Court's type-volume limitation rules. According to the word count calculated by the word processing system with which this motion was prepared, the motion contains a total of 404 words.

/s/ Joshua E. Kurland